



THE COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT
DIVISION OF OCCUPATIONAL SAFETY
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July 6, 2001

Christopher Burger
Foundation For Fair Contracting
Box 256
State House Station
Boston, MA 02133

Re: Prevailing Wage Rates; Excavation Work By Utility Companies

Dear Mr. Burger:

This letter responds to your requests for a determination of whether the Massachusetts prevailing wage law, M.G.L. ch. 149, §§ 26-27D, applies to the installation of underground conduit systems by private utility companies at the Freetown Elementary School and the Freetown-Lakeville Middle School.

According to the documents provided to the Division of Occupational Safety ("DOS"), two private utility companies, Nstar Electric and Middleborough Gas and Electric, have been hired by the Lakeville-Freetown School Department to install underground conduit systems at the Freetown Elementary School and the Freetown-Lakeville Middle School, respectively. The work is being performed as part of larger construction projects underway at each school. When the work is completed, the underground conduit systems will carry electrical, CATV, and telephone lines to the buildings. The Lakeville-Freetown School District has issued purchase orders to the utility companies and will pay for the work with public funds.

The status of a company as a private utility, in and of itself, does not exempt its work from the requirements of the prevailing wage law. Though most of the work performed by private utility companies does not meet the requirements of the prevailing wage law for the



reasons presented in a letter to Messrs. Early and Marino dated August 29, 1994¹ (copy attached), the construction work performed on these projects does. On these projects, the private utility companies, as well as their sub-contractors, are engaged in the "construction of public works" just as any other private contractor would be so engaged, and are subject to the prevailing wage law. See M.G.L. ch. 149, § 26.

Furthermore, the installation of underground conduit systems at the Freetown Elementary School and the Freetown-Lakeville Middle school involves work that is the responsibility of the property owner, not the private utility companies. Non-residential property owners, also known as commercial and industrial customers to utility companies, are required to provide an acceptable portal for the utility lines to reach buildings and other structures. In this case, the portal is a conduit system. As a commercial customer, the Lakeville-Freetown School District could have chosen any qualified contractor to install underground conduit systems as part of its renovation projects, and the requirements of the prevailing wage law would similarly apply.

This determination is based on the documents provided to DOS and limited to the specific projects mentioned. If any of the underlying facts change, please contact me immediately so that we may re-evaluate this determination.

If you have any further questions concerning this matter, please do not hesitate to contact me.

Sincerely,



Robert J. Prezioso
Deputy Director

cc: Kathryn B. Palmer, General Counsel
Ronald E. Maranian, Program Manager
Daniel S. Field, Office of the Attorney General
Dennis Flynn, Superintendent, Lakeville-Freetown School District
Richard Marks, President, Daedalus Projects, Inc.
John D. Cirame, Wayne J. Griffin Electric, Inc.

¹ The letter established that the repair of roadways in connection with the installation of cable by a private utility, when performed with private funds solely for the benefit, and at the direction, of private entities, is not covered by the prevailing wage law.